

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2975 OF 2005**

Kishor Vasant More @ Dandekar
Vs.
The State of Maharashtra

...Applicant

...Respondent

Shri. P.M. Pradhan for the Applicant.
Shri. K.V. Saste A.P.P. for the Respondent.

**CORAM : A. S. OKA, J.
DATED : JULY 12, 2005.**

P.C.:

1. Heard learned Advocate for the Applicant and learned A.P.P. for the State. On 14th June, 2005 and 05th July, 2005 submissions were heard and the hearing of the Application was postponed as report of the Chemical Analyser was awaited. Today, the report of Chemical Analyser is placed on record.

2. The offence alleged against the Applicant and the accused is under section 302 read with section 34 of the Indian Penal Code. The F.I.R. is registered on the basis of the report lodged by one Prakash Pavale who reported that dead body of deceased was lying at particular spot. The reliance is placed by the prosecution on the statement of Prakash Bhanuse who is allegedly the eye-witness and the subsequent identification of the Applicant by him in Test Identification Parade. The prosecution has also placed its reliance on the statement of Pandu Kondiram Kondekar who is father of the deceased. The case of the prosecution is that there is recovery of blood

stained clothes and sickle having blood stains at the instance of the Applicant.

3. The learned Counsel for the Applicant has pointed out that the manner in which Test Identification Parade is held raises a serious doubt regarding the truthfulness of the prosecution case. He pointed out that it is very difficult to believe that Prakash Bhanuse who is stated to be a good friend of the deceased witnessed the incident but did not file F.I.R. He submitted that even the report of the Chemical Analyser supports the case of the Applicant. The learned A.P.P. opposed the Application by pointing out the material against the Applicant and pointed out that there are two other offences registered against the Applicant. The first offence is under sections 323 and 506 of the Indian Penal Code which is registered in the year 2002 and the other offence is under sections 143, 147 and 323 of the Indian Penal Code registered in the year 2005.

4. I have considered the rival submissions. The case of the prosecution is that the witness Prakash Bhanuse was allegedly with the deceased when the offence took place and he saw the accused assaulting the deceased by an axe. The statement of the said witness is perused by me. He has stated that the incident took place at 2.00 p.m. in the afternoon and

he did not report the incident to the Police Station. According to his version he came to the Police Station only after he came to know that the offence has been registered and his friend who is deceased has expired. From village Pirangut in Taluka Mulshi he was back to Pune and only after 9.00 p.m. when he learnt about registration of offence he visited the Police Station. There is some justification in the criticism of the learned Counsel for the Applicant that it is surprising to note that the said Prakash Bhanuse who was eye-witness to the incident of murder of his friend kept quite till late in the night. The learned Counsel has criticised manner in which Test Identification Parade is held. He pointed that in the Test Identification Parade which was held on 24th February, 2005 it is alleged that witness Prakash only touched the person of the Applicant without attributing any role having being played by him. The Applicant was arrested on 30th January, 2005 and the Test Identification Parade was held on 24th February, 2005. The report of the Chemical Analyser prima facie does not support the case of the prosecution as the Chemical Analyser could not determine the blood group of the blood stains appearing on the weapon. The Applicant is in custody from 30th January, 2005. The chargesheet is already filed after completion of investigation. If all these factors are considered,

according to me a case is made out for enlargement of the Applicant on bail.

5. Hence, I pass the following order:

: O R D E R:

i) The Applicant shall be enlarged on bail in connection with C.R. No. 42 of 2004 of Paud Police Station, subject to furnishing a personal bond of Rs.15,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iii) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) Application is disposed of in the above terms.

vi) The parties to act upon an authenticated copy of this order.

JUDGE